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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/446,951	02/28/2000	STEPHEN JAMES DAVIS	8697-001-27P	3194

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EXAMINER

CUFF, MICHAEL A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 04/27/2005

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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/446,951
Filing Date: February 28, 2000
Appellant(s): DAVIS, STEPHEN JAMES

Rebecca Goldman Rudich
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/30/04.

(1) Real Party in Interest

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A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1, 29, 30, 32, 36, 37, 39 and 40 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7). Appellant's brief states that the claims are "all grouped together". The examiner assumes that appellant meant that they stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5584495

Mason

12-1996

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Of the grouped claims, the examiner believes claim 29 is the broadest claim and is mapped below. Final rejection, dated 6/17/03, also has a written out rejection.

Claim 29

Claim element

Mason

A mounting portion adapted to be Secured to a vehicle by the Gooseneck for a ball hitch and

mounting plate 12, see figure 3.

Wherein said mounting portion is Secured to the gooseneck by the Hitching ball; and

see figure 3

A step portion supported on said Mounting portion.

upper receiver 26

(11) Response to Argument

With regards to claim 29, appellant asserts that Mason does not disclose a mounting portion adapted to be secured to a vehicle or a step portion. The examiner does not concur. Mounting plate 12 (mounting portion) is clearly secured to the

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gooseneck by the hitching ball. The upper receiver 26 (step portion) is clearly supported on the mounting plate. There are no intrinsic structural limitations as to what a mounting portion or a step portion is. The upper receiver is clearly capable of being stepped on. The fact that Mason apparatus is a locking assembly and is not called a step is not relevant, see *In re Schreiber*.


Even though appellant has grouped all of the claims together, the examiner will address argument to claim 1, too. Appellant assert that, in the examiner's interpretation of the reference, the "stowed" position would not be a viable position while towing a trailer. There is no limitation in the claim, which would require this.



The term "stowed position" can have some intrinsic patentable weight. Webster's definition of "stow" is "to dispose in an orderly fashion" or "to put aside". In this case, one might swing the upper receiver to open or "stowed" position while hooking the trailer on the ball and then return the upper receiver to the "in-use" position covering the trailer and having the capability of being stepped on. The only other limitation in the claim is that in the stowed position, the step portion is adapted to be adjacent to rear of a vehicle and forward of the hitch. The upper receiver is clearly adjacent to the rear of a vehicle. The upper receiver covers the hitch ball, therefore a portion of the upper receiver is forward of the hitch ball and thus meets the metes and bounds of the broadly recited claim language.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Michael Cuff
April 18, 2005

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